4 DISCUSSION OF ISSUES AND RECOMMENDATIONS

In PA No. 02-95, the General Assembly directed the Task Force to develop recommendations that will protect and preserve the valuable natural resources of Long Island Sound and at the same time ensure reliability and provide for regional energy needs. The Task Force is confident that Connecticut's commitment to environmental stewardship can and *must be* integral to wise, pro-active, and transparent planning of energy and telecommunications infrastructure.

On January 1, 2003, the Working Group and Task Force jointly issued Part I of the Comprehensive Assessment and Report. This report recommended measures to improve state and regional energy planning and to implement environmental values and preference standards for comparative review of competing energy projects and solutions. In this Part II of the Comprehensive Assessment Report, the Task Force offers recommendations that are consistent with and reinforce conclusions and recommendations issued jointly by the Working Group and the Task Force in the Part I Report. Further, the Task Force proposes additional measures to enhance Connecticut's current energy and telecommunications infrastructure project review and permitting process, to reinforce best practices for protecting the public interest in Long Island Sound, and to identify preferential standards for protecting Connecticut's critical marine and coastal resources and public trust lands that may be affected by energy and telecommunications infrastructure proposals. The Task Force recommends that the Connecticut Energy Coordinating Authority (CECA), proposed in the joint Working Group / Task Force Part I Report, take a leadership role to ensure that environmental preference standards issued in the Part I Report for land-based projects, and in this Part II report for Long Island Sound projects, be integrated in the CECA's planning and decision-making, and in its recommendations to the Siting Council. In addition, a central location for the management and dissemination of environmental and energy resource information would be helpful to regulators, industry, and the public for the planning and analysis of proposals.

The Task Force's recommendations are intended to accomplish the following key goals:

- Protect Long Island Sound by identifying preferential standards for the review and permitting of energy and telecommunications infrastructure projects that have the potential to impact its valued natural resources.
- Promote interstate cooperation and coordination among Connecticut, New York, and Rhode Island with respect to energy and telecommunication energy and telecommunication infrastructure projects in Long Island Sound.
- Endorse the creation of CECA to coordinate Connecticut's participation in regional energy planning and related facilities planning, and promote interstate cooperation and coordination for the protection of environmental resources of Long Island Sound.
- Enhance opportunities and support for public participation in energy and telecommunications infrastructure siting proceedings with timely access to data, opportunity to voice public concerns, and transparent scoping of project studies.

Compile, maintain, and make publicly available baseline information on the resources of Long Island Sound for planning and analysis of proposals.

Develop a process and provisions for expression of the State's private property rights, research into impact avoidance and restoration techniques, and remediation of environmental perturbations.

Consistent with the statutory directive of PA No. 02-95, the specific recommendations offered by the Task Force are organized in the following three sections: recommendations that are asked for under Section 3(G), recommendations in response to Section 3(H), and other recommendations that are a general outgrowth of the assessments, evaluations, and data inventories documented in prior sections of this Assessment Report.

4.1 Providing for Regional Energy Needs While Protecting Long Island Sound to the Maximum Extent Possible (PA No. 02-95 Section 3(G))

4.1.1 Expanded Role of the CECA

The Part I Assessment Report recommended the creation of a CECA, which would be charged with the planning, coordination, and public review of energy strategies and associated environmental issues among state agencies, and with representing Connecticut's coordinated energy policy and needs before ISO-NE (or successor entity) in the regional energy planning process. The CECA would also review energy proposals of regional significance and issue an advisory report with recommendations, during the 60-day pre-application consultation period, pursuant to CGS Section 16-50l(e), to the Siting Council, and/or other regulatory agencies or decision-making entities regarding the consistency of such proposals with the State Energy Plan, Conservation and Development Policies Plan for Connecticut, and state environmental policy.

The Task Force recommends that CECA's advisory role be extended to facilitate cooperation and encourage an institutionalized working relationship between the CECA and its counterparts in other states and the federal government. Coordination among Connecticut, Rhode Island, and New York would be particularly beneficial in the planning and review of energy and telecommunications infrastructure projects of regional significance within Long Island Sound.

<u>Recommendation</u>: **Expand the role of the CECA to coordinate and facilitate communication with counterparts in New York and Rhode Island that share an interest in interstate energy and energy and telecommunication infrastructure projects.[319] The CECA and its counterparts in neighboring states may consider**

[319] A possible counterpart for New York could be the New York Energy Research and Development Authority (NYSERDA), which is currently responsible for developing New York's energy plan; the Long

mechanisms for coordination, including but not limited to, undertaking a Memorandum of Understanding (MOU) that seeks: consistent and compatible standards to determine public need and environmental preference standards for the protection of Long Island Sound; consideration of benefits and alternative solutions for energy reliability and energy facilities of regional significance; to set goals and encourage the collection of marine and coastal resource data; and to interact with the FERC and other agencies.

Objective: Promote interstate cooperation and coordination for energy planning, and the protection of environmental resources of Long Island Sound.

Through its interstate coordination role, the CECA could provide a mechanism for promoting and implementing energy solutions that avoid or minimize the numbers and impacts of energy and telecommunications infrastructure projects crossing Long Island Sound. Such solutions depend on the cooperation of all states that border Long Island Sound. Other interstate functions could include fostering the coordination of participating State energy plans consistent with regional goals of energy reliability and environmental protection; providing a voice for Connecticut in regional energy planning forums for the protection of Long Island Sound and the provision of reliable energy; and interacting with other regional planning initiatives, including initiatives by ISO-NE and NYISO, EPA Region 1 and 2, Northeast States for Coordinated Air Use Management (NESCAUM), and the Ozone Transport Assessment Group (OTAG).

Among other benefits, the interstate coordination role of the CECA has the potential to:

- Encourage the interstate coordination of environmental protection programs, including the development of consistent environmental preference standards for Long Island Sound;

  Improve regional air quality and reduce greenhouse gases;

  Improve regional energy reliability and security; and

  Consider energy costs to consumers.

Implementation: The CECA should be established by Legislation, and its charter should incorporate the functions recommended by the Working Group and the Task Force.

4.1.2 Application of Environmental Preference Standards for the Protection of Marine and Coastal Resources

The waters of Long Island Sound and its coastal resources, including tidal rivers, streams and creeks, wetlands and marshes, intertidal mudflats, beaches and dunes, bluffs and

Island Power Authority (LIPA), which is currently developing an energy plan for Long Island; or a group comprised of energy and environmental stakeholders.

headlands, islands, rocky shorefronts and adjacent shorelands form an integrated natural estuarine ecosystem, which is both unique and fragile. It is a general goal and policy of Connecticut to ensure that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth. It is also the public policy of Connecticut to avoid siting energy and telecommunications infrastructure projects in Long Island Sound, where there is a prudent and feasible alternative. Initially, as part of a regional planning process with opportunities for meaningful state and public input, there is a "determination of public need and public comparison of system alternatives" which will establish whether the crossing of Long Island Sound can be totally avoided[320]. It is anticipated that CECA will further the planning process in reliance on a comprehensive state-wide energy plan. This energy plan must be consistent with the Connecticut Coastal Management Act (CMA) as required by CGS Section 22a-100. This process, as well as any project application process, must be transparent, public and consistent with market forces. When evaluating the environmental impacts of a project, the concepts of avoidance, minimization, mitigation and compensation should be taken in that respective order.

Recommendation: CECA should incorporate environmental preferences when reviewing and evaluating the environmental impacts of a project; the concepts of avoidance, minimization, mitigation, and compensation should be taken in that respective order.

Objective: Apply environmental preferential standards for the review and regulation of proposed energy and telecommunications infrastructure projects within Long Island Sound.

Avoidance:

Avoid crossing Long Island Sound when a prudent and feasible alternative exists.

Minimization:

Minimize adverse impacts to coastal resources (as defined in CGS Section 22a-93(7)), such as shellfish concentration areas, intertidal flats, islands, tidal wetlands, and threatened and endangered species of special concern (as defined in CGS Section 26-304).

Minimize short-term adverse impacts and avoid long-term impacts to water dependent uses (as defined in CGS Section 22a-93 (16)).

[320] To the extent that the Federal Energy Regulatory Commission (FERC) has primary jurisdiction regarding natural gas pipeline siting and need determination, the applicability of these preferential standards in particular projects may differ.

Minimize adverse environmental impact of energy and telecommunications infrastructure attributable to size, length, number, installation method and timing of construction of energy and telecommunications infrastructure.

Minimize adverse environmental impacts to near shore environments by using technology such as horizontal directional drilling, where technologically feasible.

Minimize installation in areas where geologic or other subsurface constraints would result in adverse environmental impacts associated with either larger energy and telecommunications infrastructure or more intrusive installation techniques.

Minimize adverse environmental impacts of proposed projects by giving careful consideration to utilization of/upgrades to existing energy and telecommunication infrastructure as an alternative to totally new construction.

Minimize physical impediments to migration of living marine resources.

Mitigation:

- Mitigate any adverse environmental impacts that cannot be minimized.

The concept of compensation is a step of last resort, is not an appropriate step to be considered at the planning level, and will be considered during the project-specific permitting process.

Implementation: Legislative policy direction to regulatory agencies and the CECA to incorporate environmental preferences when reviewing and evaluating the environmental impacts of a project.

4.1.3 Potential Planning Mechanisms for Long Island Sound.

Long Island Sound is a broad, diversified estuarine ecosystem, characterized by a myriad of physical and biological resources. These coastal, nearshore, and offshore resources are both dynamic and interdependent, as evidenced by the linked relationships between marine food webs and their supporting habitat; the migratory nature of many of the marine and coastal bird and fish species; the differences from year-to-year in productivity on established shellfish lease beds; and climatic variability.

In accordance with Section 3(A) of PA No. 02-95, the Task Force has inventoried and prepared maps of the available existing data concerning the natural resources of Long Island Sound. (See Appendix C.) The Task Force's map compendium of Long Island Sound resources represents a valuable tool for researchers, for policy planners, and for energy and telecommunications infrastructure companies seeking to conduct preliminary assessments of potential locations for facilities in Long Island Sound. However, the maps may not reflect the universe of resources to be considered by applicants for projects in Long Island Sound. Thus, for example, for energy and telecommunications infrastructure project siting purposes, the Task Force recognizes that while the natural

resource maps may represent a starting point for planners, each project will be different and must be considered not only in the context of site-specific coastal, nearshore, and offshore resources, but also in light of the potential impacts, taking into consideration the particular construction techniques proposed for the project and the technology available at the time. Coordinating with the involved regulatory agencies (e.g., the Siting Council, DEP, the FERC, Corps, NMFS, EPA, Connecticut Historical Commission [for marine archaeological resource evaluations]; and counterparts in New York), any applicant proposing an energy or energy and telecommunication infrastructure project in Long Island Sound must continue to be responsible for conducting detailed resource studies and analyses specific to their project area. Such analyses are a requisite of state and federal permit and certification processes.

The Task Force recommends that Connecticut continue to work toward completing detailed resource data sets and mapping for Long Island Sound, coordinating in particular with New York and the federal government to assure that comparable data are compiled and maintained not only for areas under Connecticut jurisdiction, but also for Long Island Sound's entire ecosystem. Such efforts are ongoing through programs such as the Long Island Sound Study and the U.S. Fish and Wildlife Service's Long Island Sound stewardship/biological reserve program.

The Task Force reviewed the feasibility of using the available resource mapping and data sets as a foundation for planning for the development of energy and telecommunications infrastructure facilities in Long Island Sound through such a mechanism as ocean zoning or marine protected areas (MPAs), and corridors. These programs may merit consideration in the future. However, at this point in time, additional research is needed first to better define Long Island Sound's resources and then to determine the particular objectives of a resource protection program. Moreover, any program must not be driven solely by energy and telecommunications infrastructure planning, but rather must seek the input of the broad range of stakeholders involved in the use, protection, and enjoyment of Long Island Sound.

There are locations within the United States and internationally where MPAs have been established to address identified resource concerns. Within these MPAs, various uses are restricted to protect sensitive species and habitats. In many of the individual MPAs reviewed by the Task Force, energy and telecommunications infrastructure projects are regarded as being "in the public interest" and have not been precluded from the MPA, or have been designated as a "special use" subject to review and approval in accordance with policies specific to that use and to the goals of the respective MPA. These mechanisms, while allowing for the construction of energy and telecommunications infrastructure projects, prescribe appropriate resource management measures applicable to these uses, within the context of existing regulatory policies.

Currently available information supports a conclusion that the resources of Long Island Sound are more varied and homogeneously distributed than would be found in a typical area designated as a MPA. Recognizing the diversified nature of Long Island Sound's estuarine ecosystem, the Task Force observed that the objectives behind the

establishment of MPAs in Long Island Sound will require careful study and must be driven by resource protection goals. Should MPAs be pursued for Long Island Sound, it should be noted that such a designation, while useful, could be atypical.

In areas of the United States and internationally, marine zoning has also been used to protect sensitive resources. Zoning allows for the identification of specific sites or areas where activities such as utility energy and telecommunications infrastructure would not be allowed due to identified impacts, and where such uses would be acceptable. However, the Task Force observed the establishment of marine zoning is likely to be a long and complicated process, requiring the involvement of a wide group of stakeholders.

Potential steps, which may be appropriate to consider for marine zoning or MPAs in Long Island Sound, include:

1) Identify and assess existing habitats and coastal resources;
2) Identify and assess existing uses;
3) Document and map such uses and consider: a) how habitats are impacted; b) current protection methods; and c) priorities, including exceptions to prohibitions and restrictions for utility energy and telecommunications infrastructure and/or projects "necessary to the public interest";
4) Determine the spatial scale requirement for protection (e.g., how much acreage must be included to provide the necessary resource protection);
5) Determine the relative spatial percentage protection (e.g., is partial protection of a zone sufficient or is full protection of the zone required);
6) Determine the tools, technologies and human resources necessary to effectuate a zoning plan;
7) Determine interagency involvement (e.g., who gets involved where); and
8) Identify stakeholders and solicit their input to the proposed zoning through appropriate public forums.

The Task Force also considered the designation of energy and telecommunications infrastructure corridors as a mechanism to further the objective of protection of Connecticut's resources in Long Island Sound. The Task Force is not recommending the use of corridors as a resource protection based mechanism. Rather the Task Force developed a comprehensive listing of issues of potential relevance when considering the location of new utility energy and telecommunications infrastructure in Long Island Sound in proximity to existing utility energy and telecommunications infrastructure. This listing appears below:

- The inherent difficulty in delineating the area of any such corridor;
- National security concerns with placing multiple utility energy and telecommunications infrastructure in a common area;

Operational concerns associated with utility facilities in proximity to each other, e.g., increased likelihood of electrolytic corrosion and an increased potential for third party damage;

Substrate types and water depth can affect construction techniques and corridor width;

Repair, inspection and maintenance considerations;

Minimum separation distances required for safety;

- Distance affords protection from construction/excavation equipment;
- Avoid as much as possible crossing of cables/pipes to assure adequate access;

Impacts on utility energy and telecommunications infrastructure insurance requirements;

Liability considerations in connection with construction and post-construction activity relating to utility energy and telecommunications infrastructure;

May minimize right-of-way needs if assume finite number of utility energy and telecommunications infrastructures and/or no significant change in technology for installation and repair;

Could benefit efficiency of siting process if the corridor is identified;

May or may not facilitate avoidance or minimization of impact on discrete sensitive resources;

May increase cumulative environmental impacts, albeit within an identified area;

Use of a Long Island Sound corridor may increase adverse terrestrial environmental impacts in connection with the concentration of related utility energy and telecommunications infrastructure;

May require energy and telecommunication infrastructure in Long Island Sound to be longer in total length thereby impacting, among other things, the energy and telecommunications infrastructure cost and the extent of needed right of way;

Any corridor proposed for Long Island Sound would require the concurrence of New York;

Current lack of data adversely impacts a conclusive decision on location; and

Establishing a common corridor will result in repeated impacts in the same areas and will likely result in long-term effects.

The Task Force concluded that additional research, coordination and evaluation are needed before there can be a determination of the suitability of any of these planning mechanisms for proposed energy and telecommunications infrastructure projects in Long Island Sound. Further, all stakeholders would need to be involved in the development of any of these initiatives, since MPAs, marine zoning and the delineation of corridors would clearly have implications well beyond the utility industry.

Recommendation: Connecticut should continue to work toward completing detailed resource data sets and mapping for Long Island Sound. With completion of detailed resource data sets and mapping for Long Island Sound, which is an essential step and requires a significant level of additional financial, personnel and time commitment, the legislature can then evaluate and, as appropriate, implement, or otherwise further the implementation of, specific planning mechanisms for Long Island Sound. Such resource protection based mechanisms may include the designation of marine protected areas, and/or the adoption of marine zoning.

Objective: Provide a means to better identify and understand the resources of Long Island Sound in the context of the ecosystem and then evaluate appropriate planning mechanisms for Long Island Sound.

The planning effort required for Long Island Sound spans state boundaries and requires continued coordination among Connecticut, New York, Rhode Island, and key federal resource agencies such as EPA, the Corps, USFWS, and NMFS. Most importantly, it also requires substantial financial commitments to further an understanding of Long Island Sound's resources through research studies; and to maintain and update resource databases.

Significant additional research is needed first to better define Long Island Sound's resources and then to determine the particular objectives of a resource protection program. The overall management of Long Island Sound must not be driven solely by energy and telecommunications infrastructure planning, but rather must seek the input of the broad range of stakeholders involved in the use, protection and enjoyment of Long Island Sound.

Implementation: Through the legislative process and continued coordination with federal agencies and other states, including New York and Rhode Island, additional funding and initiatives can be identified that will further the development of specific planning mechanisms for Long Island Sound that incorporate appropriate resource protection.

4.2 Natural Resource Performance Bond Levels (PA No. 02-95 Section 3(H))

PA No. 02-95 Section 3,(H) charged the Task Force with producing recommendations on natural resource performance bond levels to insure and reimburse the state in the event that future electrical power line crossings, gas pipeline crossings or telecommunications crossings substantially damaged the public trust in the natural resources of Long Island. DEP and the Siting Council have available today a number of tools to address these instances of damage. They include:

- Performance bonds or other financial sureties
- Permit/Certificate terms and conditions

Statutory provisions[321]

Recommendation: Regulatory agencies should continue the practice of requiring performance bonds for projects that may affect Long Island Sound. Performance bonds levels are presently and should continue to be based on a site-specific and project-specific estimation of potential damage, remediation, and monitoring.

Objective:

Confirm that mechanisms exist to ensure that a proposed project is constructed as permitted.

Ensure that resources are available to remediate environmental impacts associated with the construction or operation of energy or telecommunications infrastructure projects.

The Siting Council and DEP have authority to require performance bonds or other financial surety as a condition of a license, a certificate or a permit. DEP routinely requires performance bonds to ensure that specific steps are taken by a permittee, for example, completion of closure of a landfill and resource restoration or compensation activities. Performance bonds or other financial sureties are also used to ensure that DEP can take prompt action in response to a situation, if a permittee fails to act. The Task Force believes that existing authority for performance bonds or other financial sureties is sufficient to address anticipated events.

A salient example of DEP's use of performance bonds or other financial sureties can be found in the Cross-Sound Cable, LLC (Cross-Sound Cable) permit (3220102720-MG issued on March 17, 2002.) That permit required that Cross Sound post two performance bonds or other financial sureties, one for $1,800,000 and another for $1,000,000. The larger bond was required for the 1,800 linear feet of horizontal direction drilling proposed by Cross-Sound Cable and can be released with DEP's written approval after completion of the work. The amount of the bond was established by multiplying 1,800 feet by $1,000, a conservative estimate of a cleanup cost per foot of a bentonite frac-out. If Cross-Sound Cable failed to respond in a manner acceptable to DEP, these bond monies could be accessed by DEP to hire a contractor. The $1,000,000 bond was required in order to ensure that funds are available to secure emergency repair of the cable, or to remove or relocate the cable if determined necessary by DEP. The amount of the bond was set based on an estimate of the cable removal cost, and the bond can only be released upon permanent removal of the cable.

Permit terms and conditions are also used to address potential damage to the public trust. For example, the Cross-Sound Cable permit requires that Cross-Sound Cable conduct extensive pre-installation monitoring and three rounds of post-installation monitoring of a

[321] See, e.g., CGS Sections 22a-7 (cease and desist orders), 22a-430 (order to abate pollution), 22a-432 (order to correct potential source of pollution), 22a-435 (referral to Attorney General for injunction) and 22a-438 (referral to Attorney General for penalties), 16-50u (Enforcement of certificate and standards requirements).

shellfish bed, at six month intervals. The purpose of the monitoring is to determine the rate of sediment reconsolidation and biological recolonization of the disturbed substrate. In addition, the permit requires that Cross-Sound Cable conduct three years of monitoring of the electric and magnetic fields, temperature, sediment chemistry, habitat disturbance and species impacts along the cable route. If DEP determines that the results of either monitoring indicate that mitigation and/or restoration is necessary to address adverse impacts, the permit requires that Cross-Sound Cable develop and implement a plan subject to DEP approval.

Pursuant to existing law, if the Commissioner of DEP finds that any person is maintaining any facility or condition, which reasonably can be expected to create a source of pollution to the waters of the state, he may issue an order to such person to take the necessary steps to correct such potential source of pollution[322].

However, the Task Force recognizes that there could be certain instances of damage to the public trust where the above-referenced options may not provide funding in a timely or appropriate manner to address adequately such damage. (Please refer to Section 4.4.2)

Implementation: Regulatory agencies should be encouraged to exercise their existing authority to require performance bonds.

4.3 Recommendations for Other Legislative and Administrative Changes to the Siting Process

4.3.1 Application Guide for Electric and Fuel Transmission Line Facilities for Marine Projects

The Part I Assessment Report recommended that the Siting Council revise the Application Siting Guide for Electric and Fuel Transmission Line Facilities. The intent of that recommendation was to assure that each application to the Siting Council incorporates all the information that the Siting Council will need to conduct a diligent and sufficient environmental project-specific review. Projects that are largely underwater present unique technical challenges and environmental concerns. The current version of the Application Guide is not oriented specifically toward marine projects. Such projects are sufficiently distinct from terrestrial projects that a separate application guide for marine projects has been developed and should be adopted.

Recommendation: The Siting Council should adopt the revised Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects, as a guidance document for applicants.

[322] CGS Section 22a-432. (Formerly Sec. 25-54k). Order to correct potential sources of pollution.

Objective: Provide prospective applicants with a guidance document to identify information that should be included in an application to the Siting Council, with a focus towards marine issues.

The current application guide for Electric and Fuel Transmission Line Facility was used to develop the Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects. The Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects represents a logical method for organizing the information that the Siting Council would reasonably use in evaluating projects with a marine component. The Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects follows the standard structure of typical environmental impact studies: a description of the project, a description of each of the natural and cultural resources potentially affected, and a discussion of the potential impacts. The revised Application Guide for Electric and Fuel Transmission Line Facilities for Marine Projects also provides guidance for minimum data quality requirements.

The Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects is necessarily generic. Each project application must be tailored to address site-specific project attributes. Additional site-specific information needs may be identified by the project proponent, the potentially affected municipality(s), and the public during the pre-application consultation period and recommended project scoping process, discussed below. The project proponent then has the option of incorporating such site-specific information in the initial application, or, if further study is required, of submitting a supplemental study as documentary evidence during the proceedings. All such studies and reports shall become part of the record of the proceeding.

In developing this recommendation, the Task Force completed an initial proposed Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects, included as Appendix E of this Assessment Report. This Application Guide for Electric and Fuel Transmission Line Facilities for Marine Projects identifies information that a prospective applicant should provide in order to evaluate the potential impacts to the aquatic resources of Long Island Sound. This guide may be used separately or merged with the revised terrestrial "Electric Transmission Line Facility" application guide, produced by the Working Group, as determined most efficient and productive by the Siting Council.

Implementation: Through the public hearing and review process, the Siting Council may seek to adopt the revised Application Siting Guide for Electric and Fuel Transmission Line Facilities for Marine Projects.

4.3.2 Certification Criteria: Need versus Benefit Standard

CGS Section 16-50p prescribes the criteria that the Siting Council must consider in issuing a certificate. The criteria for siting overhead energy and telecommunications infrastructure is different from the criteria applied to electric transmission lines (69 kV

and above) that are substantially underground and underwater. An overhead electric transmission line (or an intrastate underground gas transmission line) can not be approved without a finding of "public need" and the "public need" must outweigh the cumulative adverse effect on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish and wildlife. (CGS Section 16-50p(c)(2)). In contrast, an electric transmission line that is substantially underground or underwater shall not be approved unless the Siting Council finds a "public benefit" for the facility, and this "public benefit" outweighs the cumulative adverse environmental effects of the project. A "public benefit" exists if the facility "is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity." (CGS Section 16-50p(c)(2)).

Recommendation: Revise CGS Section 16-50p to replace "benefit" with "need" for the regulation of electric transmission lines that are substantially underwater[323], including in Long Island Sound and adjacent estuaries.

Objective: Develop a regulatory standard consistent with State goals to protect the environmental resources of Long Island Sound, while providing for energy reliability and regional energy needs.

Traditionally, the concept of public need stems from utilities' obligation to "provide adequate and reliable services at the lowest reasonable cost to consumers" (CGS Section 16-50(g)), and from utilities' ability to recover the prudent cost of such service from ratepayers. To meet the need test, a service provider generally must demonstrate that the proposed transmission expansion or reinforcement project addresses an electric security or reliability problem. Generally accepted industry standards determine system reliability of the interconnected electric systems and the need for electric transmission reinforcement, based on the following two industry standards: 1) Adequacy - The ability of the electric systems to supply the aggregate electrical demand and energy requirements of their customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements; and 2) Security - The ability of the electric systems to withstand sudden disturbances such as electric short circuits, unanticipated loss of system elements, or cascading failures.

The statutory "public need" standard for overhead transmission lines can be perceived by some to be more stringent than the "public benefit" standard applied to transmission lines that are substantially underwater. The proposed change to the statute is intended to create consistency with the state's desire to protect its aquatic and marine resources as diligently as its terrestrial resources.

Implementation: A legislative change to the statute would be required.

[323] For purposes of this recommendation, underwater is defined as coastal, nearshore, and offshore waters; estuarine embayments; wetlands and watercourses including both tidal and freshwater; intertidal flats; and floodplains.

Throughout the course of the Working Group and Task Force meetings and deliberations, members heard from experts, stakeholders, and other interested parties about a need to enhance public input and public participation in Connecticut's energy and telecommunications infrastructure proceedings. The Working Group's concerns were addressed, in part, by recommending the creation of the CECA, which would review energy proposals of regional significance and issue an advisory report with recommendations, during the 60-day pre-application consultation period, pursuant to CGS Section 16-50l(e), to the Siting Council, and/or other regulatory agencies or decision-making entities.

Opportunities for public input and participation in a Siting Council process currently exist through the following mechanisms:

- A 60-day pre-application consultation period with the potentially affected municipalities;
- Provisions for public notice of the application to property owners abutting the proposed site(s) included in the electric utility bills of customers in the project area (for electric transmission facilities), and published in newspapers;
- Party and Intervenor participation;
- Pre-hearing conference(s) and pre-hearing discovery;
- Public field reviews;
- Public hearing, with mandatory evening hearing;
- Advocacy from the Office of Consumer Counsel and the Office of the Attorney General;
- Required consultation with State agencies; and
- Public notice of final decision, with an opportunity for administrative appeal and judicial relief.

In addition, opportunities for public participation in regulatory review processes may exist for projects in Long Island Sound within the DEP, ACOE and the FERC.

While Connecticut's mechanisms for public input and participation in siting processes are substantial and exceed those of many other states, there are opportunities to enhance the Siting Council procedures. The Task Force has identified practices that would improve the transparency and accessibility of siting processes. Each of these recommended practices is discussed below.

4.3.3 Project Scoping Process

Per CGS Section 16-50l(a), the project proponent shall submit an application "containing such information as the applicant may consider relevant and the council or any department or agency of the state exercising environmental controls may by regulation require...." The Task Force has recognized that the application process would benefit

from more specificity, and accordingly, the Task Force has proposed a revision to the Application Siting Guide for Marine Projects. However, the Application Siting Guide for Marine Projects is generic rather than site or project-specific. Consequently, the Task Force seeks to enhance the opportunity for the public and affected groups to identify issues for in-depth project-specific study and evaluation at an early stage in the application process, through a formal scoping process.

Scoping is intended to ensure that potential issues are identified early, that significant issues are properly studied, that issues of little significance do not consume time and effort, and that the application, to be submitted to the Siting Council, is thorough and balanced. The scoping process should identify public and agency concerns, clearly define the environmental issues and alternatives to be examined by the Siting Council, and identify state and local agency requirements, which should be addressed.

Recommendation: Enhance the scoping process during the pre-application consultation period to ensure that the project proponent is fully informed regarding the concerns of the public, the CECA, and individual resource agencies.

Objectives:

- Enhance the mechanism for the project proponent to further assure early and meaningful feedback from the CECA, state and local agencies, the potentially affected municipality(s), and the public;
- Allow for meaningful and early input from interested parties, as project proponents prepare the application to the Siting Council;
- Identify potentially relevant environmental impact studies;
- Identify potentially viable alternatives that the applicant should consider; and
- Identify natural resources of concern, environmental preferences, and evaluation factors specific to the proposed project.

An independent entity, assigned by the Siting Council should also hold a meeting for the scoping/identification of issues regarding a proposal of regional significance, during the pre-application consultation period. The independent entity, assigned by the Siting Council should notice and facilitate the scoping meeting at a time and location to be determined by the Siting Council. The independent entity, assigned by the Siting Council should solicit participation from the project proponent, the CECA, state and local agencies, the potentially affected municipality(s), and the public. The independent entity, assigned by the Siting Council should issue a summary report of the scoping meeting to the project proponent, the CECA, and each municipality in attendance at the scoping meeting within a reasonable time, but no later than the conclusion of the 60-day pre-application consultation period. The project proponent may either address the problems and issues identified at the scoping meeting within the initial application, or in subsequent reports to the Siting Council, which will become part of the record of the proceeding.

Implementation:
Legislative change recommended.

The following process would begin after a project proponent[324] has compiled sufficient information regarding an energy and energy and telecommunication infrastructure project of regional significance (PRS) to commence the pre-application consultation with the municipality.[325]

Note: Text identified in bold font reflects recommended enhancements to the existing regulatory process.

Table 19 – Enhanced Regulatory Process

Action	Responsible Party/Timing
Project proponent makes statutorily required contact with the municipality(s) and provides each with technical reports.	Project proponent; minimum of 60 days prior to submission of application to the Siting Council.
Advisory review of PRS for consistency with the State Energy Plan, Conservation and Development Policies Plan for Connecticut, state environmental policy, and/or environmental preferences.	**CECA; to be undertaken during pre-application consultation period.**
Facilitate a meeting for scoping and identification of issues with participation by the project proponent, the CECA, state and local agencies, the potentially affected municipality(s), and the public.	**An independent entity, assigned by the Siting Council; to be undertaken during pre-application consultation period.**
Make available a Scoping Summary Report with an outline of significant issues regarding the PRS.	**An independent entity, assigned by the Siting Council; to be undertaken during pre-application consultation period.**
May recommend issuance of a solicitation (request for solutions) for open season to RTEP through TEAC. CECA may also issue an open season request for solutions for non-regulated (i.e., merchant) projects.	**CECA; to be undertaken during, but prior to the conclusion of, the pre-application consultation period.**
Application filed with the Siting Council.	Applicant; following the pre-application consultation period.
Issue an advisory report with recommendations to the Siting Council, and/or other regulatory	**CECA; to be issued when the application is filed.**

[324] CGS Section16-50l Application for certificate. Notice. Application or resolution for amendment of certificate.
[325] CGS Section 16-50l(e).

Action	Responsible Party/Timing
agencies or decision-making entities.	
Filing of all materials provided to the municipality, and a summary of the consultations with the municipality including all recommendations issued by the municipality, with the Siting Council.	Applicant; no later than 15 days after filing an application.
Filing of the Scoping Summary Report with the Siting Council.	**Applicant; no later than 15 days after filing an application.**
Completeness review and development of schedule; consideration for the need for independent studies.	Connecticut Siting Council.
Consultation/solicitation of state agency comments.	Connecticut Siting Council.
Pre-hearing discovery.	Connecticut Siting Council, applicant, parties and intervenors; to be undertaken after receipt of application, but prior to close of evidentiary hearing(s).
Request the Connecticut Siting Council for an independent study.	**Any person; to be undertaken generally during pre-hearing discovery, and prior to the commencement of evidentiary hearing(s).**
Independent studies completed.	**Consultants; reports must be received and made available prior to evidentiary hearing(s), or as required by the Siting Council.**
State agency comments due.	State agencies; must be received and made available prior to evidentiary hearing(s).
Hearing(s) with cross-examination of all verified and accepted testimony, including the independent study(s).	Connecticut Siting Council, applicant, parties and intervenors; to be held no sooner than 30 days, nor later than 150 days after receiving application.
Public comments, briefs, and proposed Findings of Fact due.	Applicant, parties and intervenors; prior to the close of the record.
Close of record.	Connecticut Siting Council; 30 days after the close of the last hearing.
Decision.	Connecticut Siting Council;

Action	Responsible Party/Timing
	within 12 months of receipt of an application, extendible by 180 days upon consent of applicant.
Petition for reconsideration of agency decision. Administrative appeal.	As provided by law.
Appeal to Superior Court.	As provided by law.
Appeal from final judgment of Superior Court.	As provided by law.

4.3.4 Independent Study

In cases where there is stakeholder interest in issues that exceed the scope of studies conducted by the applicant, some states have chosen to implement mechanisms to provide for further study. Some venues, such as Rhode Island, have a dedicated environmental advocate in the state Attorney General's office. This environmental advocate intervenes on behalf of conservation interests in all siting proceedings, and may have the resources to direct studies and bring in technical experts. Other venues, such as New York[326], utilized intervenor funds. Intervenor funds are monies set aside to aid citizen participation in areas of public interest. The Task Force has considered both options and recommends that Connecticut recognize the advocacy provided by Connecticut's Office of the Attorney General and the Office of Consumer Counsel. In addition, the Task Force supports the Siting Council's exercise of its discretion pursuant to its existing authority to commission independent studies and analysis of issues. The Siting Council currently has the authority to commission independent studies pursuant to CGS Section16-50n(e).[327]

Recommendation: Relevant issues that are not adequately addressed should be studied and analyzed by resource experts, or independent consultants, commissioned by the Siting Council, to further the development of reliable data.

The Task Force has also discussed the establishment of Intervenor Funds as a mechanism to fund and commission studies, mechanisms for appeal of agency decisions to not fund independent studies, use of subpoenas for expert testimony, use of agency staff for expert

[326] Article X *of the New York Public Service Law* pertained to generation facilities with a capacity of 80 MW or larger, has sunset, and is now being debated by the New York General Assembly for reenactment.

[327] Per CGS Section 16-50n(e), "Upon receipt of the application, the council may employ one or more independent consultants to study and measure the consequences of the proposed facility on the environment. The council shall direct such consultant or consultants to study any matter that the council deems important to an adequate appraisal of the application. Any such study and any report issued as a result thereof shall be part of the record of the proceeding."

testimony, and judicial relief. The Task Force also recognizes legislative initiatives in the 2003 session, and the debate on this issue. [328]

Recommendation: The Connecticut Siting Council should develop mechanisms to better communicate to the public the existing process and provisions for the independent study of issues.

Objective:

Objectivity of Data:

- All commissioned studies and analysis shall be administered by the Siting Council, consistent with the provisions of CGS Section 16-50n(e), in a manner to protect the independence and integrity of the information provided to the record.

Representative of Public Interests:

- All commissioned studies and analysis shall be restricted to areas that provide information necessary for the public interest to be adequately represented in a proceeding for a proposed project.

Transparency of Process:

- While a public scoping process would be used to initially identify issues to develop studies and analyses; study and analysis of additional issues shall not be precluded, even if not initially identified during the scoping process, if found to be necessary and in the public interest.

Reliability of Data:

- A qualified witness for all studies and analyses must be available for cross-examination by all parties and intervenors.

Implementation: The Siting Council shall administer the program as follows:

- The Siting Council has agreed to communicate to the public, and use its discretion to exercise the provisions of CGS Section 16-50n(e), and that an independent analysis may be required[329].
- All studies and analyses shall be entered into the official record as evidence, subject to public inspection and cross-examination through responsible and qualified witness(es).

[328] The Task Force recognizes that the Connecticut General Assembly is considering House Bill Number 6508 that includes provisions for a municipal participation fee.

[329] CGS Section 16-50v (c) The fee for each application for a certificate for a facility described in subdivisions (1) to (4), inclusive, of subsection (a) of section 16-50i, shall be used to meet the expenses of the council in connection with the review of, hearing on and decision on the application, including the expenses of any consultant employed by the council..."

Studies and analyses shall be subject to appropriate audit authorized by law.

The final report of any study or analyses shall be made public before the public hearing, and made part of the official record.

The Siting Council may pre-qualify state and federal resource experts, consultants, and others to undertake the independent study and analyses of issues. Pre-qualification and selection of resource experts and consultants should be undertaken with review and input from the public.

The commissioning of independent studies and analyses, by the Siting Council, is funded by an assessment on the applicant.

4.3.5 Public Availability of Siting Council Documents

The siting process in Connecticut encourages public involvement and provides opportunities for interested parties to participate in each proceeding. Parties meeting certain criteria may participate with formal Party Status or Intervenor Status; any other interested party may file a written statement that becomes part of the record. While project developers and well-organized intervenors accustomed to the siting process may have the time and resources to attend hearings and review the complete record at the Siting Council's office, some interested parties may rely on information that is readily available over the Internet. The Connecticut Siting Council's web site (http://www.ct.gov/csc/site/default.asp) contains an updated schedule of Siting Council proceedings, links to the relevant statutes and regulations, application siting guides, the Annual Forecast of Loads and Resources, Siting Council membership, and general information on the Siting Council process. Information on an individual docket is limited to the Opinion, and Decision and Order issued by the Siting Council. Applications, technical reports, interrogatories, and responses to interrogatories, transcripts of hearings, Findings of Fact, and other relevant documents are not always provided to the Siting Council electronically, and consequently are not available on the Siting Council web site. Some projects, but not all, sponsor web sites where interested parties can find application documents, press releases, some technical studies, and general project information. These are helpful but incomplete records of the Siting Council proceedings.

<u>Recommendation</u>: **Establish and maintain docket records readily accessible to the public through the Siting Council's web site. At a minimum, the web site should contain a docket management system that allows information to be searched by docket number, date, and keyword. Require the electronic filing of specified materials from the applicant, parties, and intervenors.**

Objective: Facilitate public access to Siting Council proceedings and enhance public involvement in such proceedings.

Implementation:

- Subject to the exclusions below, the Siting Council has agreed to require the electronic filing of information associated with regulatory proceedings by an

applicant, and parties and intervenors. The Siting Council has also agreed to post information, or identify links to information associated with regulatory proceedings on the Siting Council's web site, including the application, schedules, notices, reports, interrogatories, responses to interrogatories, Findings of Fact, Opinion, Decision and Order, progress reports, and monitoring reports (pre- and post-construction), as technically and practically possible.

The Siting Council should maintain an up-to-date index that identifies all active dockets, their status, owner/developer, and location.

Revise Section 16-50j-12 of the Regulations of Connecticut State Agencies to require the electronic filing and posting of documents in a proceeding.

Certain information may be excluded if determined to be a security risk or proprietary, or determined by the Siting Council to be consistent with legal standards for protective orders and/or protocol for homeland security. In addition, certain information may be excluded if it is in a non-reproducible format, if such information is referenced or cited and available by alternate means.

4.4 Recommendations for Other Legislative and Administrative Changes

4.4.1 Centralized Data Repository for Energy and Environmental Data within Long Island Sound

As part of the legislative mandate under PA No. 02-95, the Task Force has assembled readily accessible environmental data required under Section 3(A), including information regarding Connecticut's natural resources identified under CGS Section 22a-93. Much of this information had previously been developed and/or compiled by DEP. The Task Force augmented these data with other relevant information from a variety of sources, including information regarding Connecticut's aquaculture and fisheries resources, and energy and telecommunication infrastructure on land and crossing Long Island Sound. These available data are now in a geographic information system (GIS) accessible platform. This GIS database can serve as an important resource for state and municipal planners, environmental organizations, investors / project developers, project intervenors, scientists, educators, and other researchers, and other interested parties. The Task Force recognizes that some of the information, such as detailed locations of energy and telecommunication infrastructure, is sensitive and general dissemination of such information would violate security guidelines established by transmission owners, system operators, and regulators.

Recommendation: Designate the Long Island Sound Resource Center at the University of Connecticut, Avery Point and/or the Map and Geographic Information Center (MAGIC) at the Homer Babbidge Library, University of Connecticut, Storrs as the repository for the Task Force's GIS (energy and environment) database, and other Long Island Sound information as developed.

Objective: Allow for the Long Island Sound database to be maintained, updated, and made accessible to all interested parties, while maintaining the security and timeliness of the database.

Incorporate the Task Force's work product with existing DEP and MAGIC data. Ensure that access to the GIS database is open to the general public, and, as technology allows, available through the Internet. Sensitive information shall be de-sensitized so that precise locations of energy and telecommunication infrastructure are protected.

Implementation: Designation of the Long Island Sound Resource Center at the University of Connecticut, Avery Point and/or the MAGIC site at the University of Connecticut, Storrs as the central state repository for environmental and energy resource data.

> Scientific studies associated with regulatory proceedings should be maintained by respective agencies for public dissemination until resources are available for retention in a central repository.
>
> Legislative appropriation and funding will be needed to support database management, updates, and expansions. The estimated costs to establish and maintain a repository for the collection and dissemination of environmental and energy resource data for Long Island Sound would be approximately $100,000 per year.

4.4.2 Submerged Lands Leasing Program

In reviewing the effectiveness of natural resource performance bond levels to insure and reimburse the state for substantial damage to the public trust in natural resources of Long Island Sound, the Task Force concluded that existing regulatory tools can effectively address adverse impacts attributable to a specific project (Section 4.2). The Task Force also concluded that there may be a benefit to affording state agencies access to enhanced funding to address other impacts not attributable to a specific project. The Task Force concludes that such funding could be used to pay for general Long Island Sound resource restoration and research activities. The Task Force identified an expanded submerged lands leasing program as a possible means to enhance funding. Specific reference was made to submerged lands leasing programs in some other states, including New York.[330] Connecticut's existing submerged lands leasing program, as currently administered by the Department of Agriculture, applies to shellfish grounds in Long Island Sound within the state's jurisdiction.

In its discussion of an expanded submerged lands leasing program for Connecticut, the Task Force discussed at length the breadth and scope of issues for such a program. However, there was not consensus on how such a program could be applied objectively and without discrimination, consistent with existing state law. The very nature and composition of this Task Force limit its activities to consideration of the reliability of

[330] Information on New York's program is available at: www.ogs.state.ny.us/rppu/landunder/default.asp.

regional energy systems and environmental impacts associated with the placement of electric power lines, natural gas pipelines, and telecommunications cables in Long Island Sound. Other activities in Long Island Sound make use of public submerged lands and may have long-term and unanticipated environmental impacts; the Task Force identified certain of these activities, but did not consider them further. Further evaluation of a submerged lands leasing program, comprehensive in nature, requires the involvement of additional stakeholders including, but not limited to, recreational, industrial, commercial fisheries and shellfisheries, and shipping. Such an effort is beyond the charge and scope of this Task Force.

Recommendation: The Connecticut legislature should investigate the viability of and structure for a comprehensive and expanded submerged lands leasing program.

Objective: Provide a means to realize a public benefit from the private use of public submerged lands of Long Island Sound to fund a mechanism to be used by the state to enhance its management of public submerged lands, including potentially reimbursement of costs incurred by the state for long-term remediation in Long Island Sound, payment for restoration of resources in Long Island Sound and research to further protect the resources of Long Island Sound.

The use of a comprehensive, expanded public submerged lands leasing program may be consistent with the interests the state has in these lands and the interest the state and the public have in protecting and maintaining the valued resources of Long Island Sound.

Implementation: The Connecticut legislature could determine to further evaluate the viability of and structure for a comprehensive public submerged lands leasing program. Such an effort could involve users, stakeholders, federal officials and state officials from Connecticut, New York and Rhode Island. Authorization could be by statute or Executive Order.

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